

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

EDEN ROGERS, and BRANDY WELCH,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, ALEX  
AZAR, in his official capacity as Secretary of  
United States Department of Health and  
Human Services, ADMINISTRATION FOR  
CHILDREN AND FAMILIES, LYNN  
JOHNSON, in her official capacity as  
Assistant Secretary of Administration for  
Children and Families, HENRY MCMASTER,  
in his official capacity as Governor of the State  
of South Carolina, MICHAEL LEACH, in his  
official capacity as State Director of the South  
Carolina Department of Social Services, and  
SCOTT LEKAN, in his official capacity as  
Principal Deputy Assistant Secretary of  
Administration for Children and Families,

*Defendants.*

Civil Action No.: 6:19-cv-01567-JD

**THE OFFICE OF THE GOVERNOR'S CONSOLIDATED MOTION FOR  
PROTECTIVE ORDER AND TO QUASH SUBPOENAS**

Christopher E. Mills (Fed. Bar No. 13432)  
SPERO LAW LLC  
1050 Johnnie Dodds Blvd. #83  
Mt. Pleasant, South Carolina 29465  
(843) 606-0640  
Email: cmills@spero.law

Thomas A. Limehouse, Jr. (Fed. Bar No. 12148)  
*Chief Legal Counsel*  
Anita (Mardi) S. Fair (Fed. Bar No. 12997)  
*Deputy Legal Counsel*  
OFFICE OF THE GOVERNOR  
South Carolina State House  
1100 Gervais Street  
Columbia, South Carolina 29201  
(803) 734-2100  
Email: tlimehouse@governor.sc.gov  
Email: mfair@governor.sc.gov

*Counsel for the Office of the Governor*

**NON-WAIVER OF SOVEREIGN IMMUNITY**

The Office of the Governor–Executive Control of State (“Office” or “Office of the Governor”), by and through the undersigned counsel, hereby notes its special, limited appearance solely for purposes of moving to quash Plaintiffs’ subpoenas and obtain a protective order related to additional subpoenas on grounds of state sovereign immunity. Neither this Motion nor any preceding or subsequent appearance, pleading, document, writing, objection, or conduct should be construed to constitute a waiver of any rights, protections, or immunities, including, without limitation, sovereign immunity or other matters under the South Carolina Constitution, the United States Constitution, or related law, which the Office expressly reserves. The Office submits additional arguments in support of the present Motion only to enable the Court to avoid the constitutional problems inherent in Plaintiffs’ subpoenas, and such arguments are not to be viewed or construed as a waiver of sovereign immunity. *See Strawser v. Atkins*, 290 F.3d 720, 729-30 (4th Cir. 2002).

**MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENAS**

Pursuant to Rule 45(d)(3) and Rule 26(c) of the Federal Rules of Civil Procedure, the Office of the Governor, a non-party to the above-captioned matter, hereby moves the Court to quash subpoenas issued by Plaintiffs requiring deposition testimony from two of the Office’s employees. The Office further moves the Court to issue a protective order preventing Plaintiffs from issuing additional subpoenas against the Office or its employees. Plaintiffs’ subpoenas are barred by state sovereign immunity, which, absent waiver or abrogation, protects a State from the intrusion of the federal judiciary into state affairs. In the alternative, the subpoenas should be quashed and a protective order issued because the deponents are high-ranking government officials, and Plaintiffs have not shown the extraordinary circumstances necessary to depose such officials. Moreover,

these depositions would constitute an undue burden, as no testimony from the Office's staff is necessary for Plaintiffs' case, and preparing for and undergoing depositions would waste limited staff time and resources, as well as intrude on privileged (and legally irrelevant) executive decision-making. Finally, in any event, the subpoenas were not validly served "on the named person" under Rule 45.

For the foregoing reasons, as well as those detailed further in the accompanying memorandum in support, the Office of the Governor submits that the Court should grant the present Motion and enter an order quashing the subpoenas issued by Plaintiffs, as well as an appropriate protective order. Should the Court grant this Motion or provide other similar relief, the Office respectfully requests that the Court consider taxing the Office's costs to Plaintiffs or imposing other appropriate sanctions against Plaintiffs' counsel to cover the expenses associated with defending against Plaintiffs' substantively and procedurally deficient non-party discovery demands.

Respectfully submitted,

Christopher E. Mills (Fed. Bar No. 13432)  
SPERO LAW LLC  
1050 Johnnie Dodds Blvd. #83  
Mt. Pleasant, South Carolina 29465  
(843) 606-0640  
Email: cmills@spero.law

/s/ Thomas A. Limehouse, Jr.  
Thomas A. Limehouse, Jr. (Fed. Bar No. 12148)  
*Chief Legal Counsel*  
Anita (Mardi) S. Fair (Fed. Bar No. 12997)  
*Deputy Legal Counsel*  
OFFICE OF THE GOVERNOR  
South Carolina State House  
1100 Gervais Street  
Columbia, South Carolina 29201  
(803) 734-2100  
Email: tlimehouse@governor.sc.gov  
Email: mfair@governor.sc.gov

*Counsel for the Office of the Governor*

April 29, 2021  
Columbia, South Carolina